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Waste Collection, Corp. and Central General De Trabajadores. Case 12–CA–215638

January 8, 2019

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS MCFERRAN
AND EMANUEL

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge and an amended charge filed by Central General de Trabajadores (the Union) on February 28 and April 26, 2018, respectively, the General Counsel issued a complaint on May 30, 2018, against Waste Collection, Corp. (the Respondent), alleging that it has violated Section 8(a)(1) of the National Labor Relations Act. The Respondent failed to file an answer.

On August 8, 2018, the General Counsel filed with the National Labor Relations Board a motion for default judgment. Thereafter, on August 20, 2018, the Board issued an Order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The Board has delegated its authority in the proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint affirmatively states that unless an answer is received on or before June 13, 2018, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true.¹ Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated June 14, 2018, notified the Respondent that unless an answer was filed by June 21, 2018, the Board would find that the allegations of the complaint are deemed to be true.² Nevertheless, the Respondent failed to file an answer.

¹ On May 30, 2018, the complaint was served on the Respondent by certified mail. On July 13, 2018, the complaint was returned to the Region. The returned envelope stated "RETURN TO SENDER," "UNCLAIMED," and "UNABLE TO FORWARD." However, it is well settled that a respondent's failure or refusal to accept certified mail or to provide for receiving appropriate service cannot serve to defeat the

In the absence of good cause being shown for the failure to file an answer, we deem the allegations in the complaint to be admitted as true, and we grant the General Counsel's motion for default judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Puerto Rico corporation, with its principal office and place of business located in Cidra, Puerto Rico (the Respondent's Cidra facility), has been engaged in the collection and transfer of waste from residential areas.

During the 12-month period preceding the issuance of the complaint, the Respondent, in conducting its business operations described above, derived gross revenues in excess of \$500,000.

During the 12-month period preceding the issuance of the complaint, the Respondent, in conducting its operations described above, purchased and received at its Cidra, Puerto Rico facility goods valued in excess of \$50,000 directly from points outside the Commonwealth of Puerto Rico.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals have held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Annabelle Hernandez Santos	Operations Manager
Oscar J. Santamaria Torres	President
Sergio A. Suna	Supervisor

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All regular full-time and part-time drivers, helpers and mechanics who work at the [Respondent's] facilities in Cidra, Puerto Rico; excluding all other employees, guards, and supervisors as defined by the Act.

purposes of the Act. See *Cray Construction Group LLC*, 341 NLRB 944, 944 fn. 5 (2004); *I.C.E. Electric, Inc.*, 339 NLRB 247, 247 fn. 2 (2003).

² The June 14 letter, to which a copy of the complaint was attached, was sent by certified mail to the Respondent at the same address as the complaint, and it was delivered to the Respondent, as evidenced by the certified mail return receipt attached to the General Counsel's motion.

On August 28, 2014, the Board certified the Union as the exclusive collective-bargaining representative of the unit.

At all times since August 28, 2014, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

The following events occurred, giving rise to this proceeding:

1. The Respondent, by Oscar J. Santamaria Torres, at the Respondent's Cidra facility:

(a) On January 23, 2018, threatened employees with loss of jobs and plant closure by threatening to cancel the Respondent's waste collections contract with the Municipality of Cidra unless its employees removed the Union as their collective-bargaining representative.

(b) On January 23, 2018, told its employees that the Respondent would not bargain with the Union.

(c) About February 2018, interrogated employees about their union membership, activities, and sympathies, and the union membership, activities, and sympathies of other employees.

CONCLUSION OF LAW

By the conduct described above in paragraph 1, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act. The Respondent's unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and take certain affirmative action designed to effectuate the policies of the Act.

ORDER

The National Labor Relations Board orders that the Respondent, Waste Collection, Corp., Cidra, Puerto Rico, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with job loss and plant closure by threatening to cancel its contract with the municipality of Cidra unless they remove Central General de Trabajadores (the Union) as their collective-bargaining representative.

(b) Telling employees that it will not bargain with the Union.

(c) Coercively interrogating employees about their and other employees' union membership, activities, and sympathies.

(d) In any like or related manner, interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its Cidra, Puerto Rico facility copies of the attached notice marked "Appendix,"³ in both English and Spanish. Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 23, 2018.

(b) Within 21 days after service by the Region, file with the Regional Director for Region 12 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Region has taken to comply.

Dated, Washington, D.C. January 8, 2019

John F. Ring, Chairman

Lauren McFerran, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the

United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT threaten you with job loss and plant closure by threatening to cancel our contract with the municipality of Cidra unless you remove Central General de Trabajadores (the Union) as your collective-bargaining representative.

WE WILL NOT tell you that we will not bargain with the Union.

WE WILL NOT coercively interrogate you about your and other employees' union membership, activities, and sympathies.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WASTE COLLECTION, CORP.

The Board's decision can be found at www.nlrb.gov/case/12-CA-215638 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

